

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Abdulrahman Ibrahim Ali,)	
)	
Petitioner and Appellant,)	Supreme Court No. 20190004
)	
vs.)	District Ct. No. 09-2018-CV-02465
)	
State of North Dakota,)	
)	
Respondent and Appellee.)	

Appeal from Order Denying Petitioner's Application for Post-Conviction Relief
entered November 16, 2018
East Central Judicial District in Cass County, North Dakota
The Honorable Thomas R. Olson, Presiding

APPELLEE'S BRIEF

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[¶2] **TABLE OF AUTHORITIES**

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[¶3] **STATEMENT OF ISSUE**

[¶4] Whether the district court did not clearly err in finding that Ali fully understood the proceedings.

[¶5] **STATEMENT OF CASE**

[¶6] Ali appeals from an order finding that Ali fully understood the proceedings and denying his ineffective assistance of counsel-based post-conviction relief application. Ali argues that he did not understand the proceedings that led to his convictions for gross sexual imposition, kidnapping, aggravated assault and terrorizing. (Ali's Brief at ¶ 19.) The State argues that the district court did not clearly err in finding that Ali fully understood the proceedings. The State thus asks this Court to affirm the district court's decision.

[¶7] **STATEMENT OF FACTS**

[¶8] **I. Criminal Proceedings**

[¶9] The State alleged that in 2015, Ali forced a woman into a convenience store bathroom, locked the door, beat the woman, ripped off her clothes, and raped her. A court trial was held in June 2017. Through a written stipulation of facts, the parties agreed that the alleged conduct occurred – from Ali forcing the woman into the bathroom through raping her. (App. 9.) The parties disputed Ali's criminal responsibility. Dr. Mark Rodlund testified that he believed Ali had been malingering and Ali was criminally responsible. (Tr. of Court Trial, June 14, 2017, 31:3-5, 32:21-33:2.) The district court found Dr. Rodlund's testimony credible and

found beyond all reasonable doubt that Ali was criminally responsible and committed the charged offenses. (Post-Bench Trial Findings and Order for Judgment, June 21, 2017, at ¶¶ 19-29.)

[¶10] A sentencing hearing was held in October 2017. During the hearing, Ali stated that he “was not running away from [his] responsibility,” he “request[s] mercy from the Court,” “all of us make mistakes,” and he was “so sorry [for] what happened.” (Tr. of Sentencing, October 18, 2017, at 25:18, 26:16, 27:4-11.) The court imposed a sentence that included twenty-six years imprisonment. (Criminal Judgment, Oct. 18, 2017.)

[¶11] Ali appealed, claiming his stipulation to the facts equated to a guilty plea and the district court failed to engage in the requisite N.D.R.Crim.P. 11 colloquy. State v. Ali, 2018 ND 87, 909 N.W.2d 112. This Court summarily affirmed. Id. at ¶ 1.

[¶12] II. Post-Conviction Proceedings

[¶13] In 2018, Ali filed an application for post-conviction relief. (App. 3.) The only ground for relief alleged was ineffective assistance of counsel. (App. 4.) The supporting circumstances asserted for the ground was “the attorney failed or overlooked the facts that Mr. Ali had mental health problems in the past, and that Mr. Ali went to [the] hospital about four times in the past for mental health evaluation.” (App. 4.)

[¶14] A hearing on Ali’s application took place in November 2018. (App. 1.) Ali testified that during the criminal proceedings, he did not understand what was going on. (Tr. Post-Conviction Hearing, Nov. 8, 2018 “Tr. PCR,” at 8:18-9:4, 10:15-17, 11:16-20, 13:24-14:5.) Ali asserted that Dr. Rodlund had lied at trial. (Tr. PCR at 15:14-21.) When asked what more his trial attorney could have done, Ali said that “when this happened, I was sick, and this is one of the times that I g[ot] those episodes, you know, of the sickness. So I did not receive justice.” (Tr. PCR at 16:19-17:1.)

[¶15] Ali’s trial attorney testified that Ali’s understanding appeared lower during meetings early in the proceedings; Ali might not have retained information or understood finer points during that timeframe. (Tr. PCR at 22:14-19.) Ali’s attorney explained this was because Ali refused medication for a period. (Tr. PCR at 22:14-16.)

[¶16] After Ali received medication, he was responsive to questions and knowingly made decisions regarding the case. (Tr. PCR at 23:2-8.) Ali’s attorney and Ali reviewed all of the police reports and all the videos – at least one of which showed Ali grabbing and forcing the woman to move. (Tr. PCR at 35:16-21, Post-Bench Trial Findings and Order for Judgment, June 21, 2017, at ¶ 12.) Ali’s attorney and Ali also reviewed the stipulation of facts “word for word,” which included an assertion Ali was adamant should be included, namely that he did not recall committing the offenses. (Tr. PCR at 29:5-30-8.) Ali’s attorney stated he

had “no doubt” that Ali understood the stipulation. (Tr. PCR at 30:9-10.) Ali wanted to argue his mental health issue but did not want a jury trial. (Tr. PCR at 27:12-14.) Ali did not want to plead guilty and wanted to assert that “he wasn’t in a state of mind to know what he was doing.” (Tr. PCR at 27: 17-22.) Ali’s attorney also reviewed the presentence investigation with Ali. (Tr. PCR at 28:24-29:1.) Ali’s attorney met with Ali approximately ten to fifteen times. (Tr. PCR at 23:9-15.)

[¶17] Ali’s attorney explained that he gathered information about Ali’s mental health - which included records from a prior Minnesota case involving Ali, Sanford Hospital, Essentia Hospital, and Southeast Human Service Center. (Tr. PCR at 24:7-25.) Ali’s attorney hired an independent evaluator, who reviewed Ali’s relevant mental health records. (Tr. PCR at 26:4-20.) The independent evaluator concluded that Ali was competent and did not lack criminal responsibility. (Tr. PCR at 26:7-9.) Ali’s attorney believed that Ali understood the court proceedings (Tr. PCR at 23:19-21, 31:7-12.)

[¶18] The district court issued an order denying Ali’s post-conviction relief application. (App. 12.) The district court found that Ali’s independent evaluator determined Ali was competent and not lacking criminal responsibility, Ali’s claim he did not understand the proceedings was “not credible,” and Ali “fully understood the proceedings.” (App. 13-15.) The district court concluded that Ali’s trial attorney was not ineffective. (App. 15.)

[¶19] STANDARD OF REVIEW

[¶20] Review of a district court's factual finding in a post-conviction relief proceeding involves the clearly erroneous standard. Ratliff v. State, 2016 ND 149, ¶ 4, 882 N.W.2d 716. A factual finding is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by the evidence, or if, although some evidence supports it, a reviewing court has a definite and firm conviction that a mistake was made. Syvertson v. State, 2005 ND 128, ¶ 4, 699 N.W.2d 855. In reviewing for clear error, the appellate court does not reweigh credibility or resolve conflicts in the evidence. Johnson v. State, 2005 ND App 8, ¶ 9, 700 N.W.2d 723.

[21] LAW AND ARGUMENT

[¶22] I. **The district court did not clearly err in finding that Ali fully understood the proceedings.**

[¶23] The evidence in the record shows that the district court did not clearly err in finding that Ali fully understood the proceedings. First, Ali's trial attorney's testimony at the post-conviction relief hearing about his interactions with Ali supports the finding. Indeed, Ali's trial attorney testified that Ali made decisions knowingly and Ali understood the court proceedings. (Tr. PCR at 23:2-21, 31:7-12.) While Ali's trial attorney noted there was a short period early on when Ali's understanding appeared lower during meetings, Ali's trial attorney explained that was remedied by Ali's medication. (Tr. PCR at 22:14-16, 23:2-8.) It should be noted that Ali's trial attorney had ample opportunity to observe Ali; besides

hearings, they met together approximately ten to fifteen times. (Tr. PCR at 23:9-15.)

[¶24] Second, testimony at the post-conviction hearing about Ali's independent evaluation supports the district court's finding. In particular, Ali's trial attorney testified that an independent evaluator concluded Ali was both competent and not lacking in criminal responsibility. (Tr. PCR at 26:7-9.) Moreover, that testimony was uncontested.

[¶25] Third, Ali's statements at sentencing support the finding Ali fully understood the proceedings. For instance, Ali acknowledged fault for his conduct, apologized, and pleaded for mercy. (Tr. of Sentencing, October 18, 2017, at 25:18, 26:16, 27:4-11.) Ali's statements are consistent with a specific strategy for mitigation and an understanding of the proceedings.

[¶26] While Ali suggests that his trial attorney was equivocal about his opinion on Ali's understanding (Ali's Brief at ¶ 24), that is not accurate. Indeed, Ali's attorney testified: "In my opinion he did understand." (Tr. PCR at 23:21.) When asked about whether Ali understood the written stipulation of facts, Ali's trial attorney said, "I do think, yes. I have no doubt." (Tr. PCR at 30:5-10.) When asked if he believed that Ali "understood all of the proceedings," Ali's attorney confirmed, "I do." (Tr. PCR at 31:10-12.)

[¶27] It should be noted that Ali appears to interchange understanding with “competency.” (Ali’s Brief at Statement of Issue & ¶ 21) While the terms are similar, competency involves a specific test and is a claim independent of ineffective assistance of counsel. The specific test for competency is whether the defendant lacks (1) sufficient present ability to consult with his attorney with a reasonable degree of rational understanding, or (2) a rational and factual understanding of the proceedings against him. State v. Dahl, 2010 ND 108, ¶ 7, 783 N.W.2d 41. The specific test was never addressed by the district court because Ali did not raise competency below. His only claim in his application for relief was ineffective assistance of counsel, based on his trial attorney’s alleged overlooking of Ali’s mental health issues. (App. 4.) And at the post-conviction relief hearing, Ali’s attorney alluded to “competency” as referring to criminal responsibility. (Tr. PCR 29:1-7). This Court’s review thus should be limited to obvious error. State v. Yineman, 2002 ND 145, ¶ 21, 651 N.W.2d 648 (indicating that issues not raised below will only be addressed using the obvious error standard).

[¶28] The record does not reveal obvious error. In fact, it supports Ali’s competence. As noted, Ali’s attorney testified that Ali made knowing decisions and understood the proceedings. (Tr. PCR at 23:2-21, 31:7-12.) Further, Ali’s attorney explained that he and Ali reviewed various documents – including the discovery, stipulation of facts, and presentence investigation. (Tr. PCR at 28:24-29:1, 29:5-

30-8, 35:16-21.) Ali even made a significant strategic decision for the trial – insisting that the factual stipulation include his assertion he did not recall committing the offenses. (Tr. PCR at 29:5-30-8.) Moreover, the independent evaluator concluded Ali was competent. (Tr. PCR at 26:7-9.) Under the circumstances, there was no obvious error by the district court relating to competency.

[¶29] In sum, the evidence supports the district court’s finding that Ali fully understood the proceedings and would support a finding Ali was competent. No basis exists to conclude the trial court made a clearly erroneous finding or that an obvious error occurred.

[¶30] CONCLUSION

[¶31] Because the district court did not clearly err in finding that Ali fully understood the proceedings and no obvious error exists, the State respectfully requests this Court affirm the district court's decision.

[¶32] Respectfully submitted this 4th day of April, 2019.

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[¶33] CERTIFICATE OF SERVICE

[¶34] A true and correct copy of the foregoing document was sent by email on the 4th day of April, to: Benjamin Pulkrabek (pulkrabek@lawyer.com)

Reid A. Brady